

1 Mark G. Tratos (Bar No. 1086)
 2 tratosm@gtlaw.com
 3 Peter H. Ajemian (Bar No. 9491)
 4 ajemianp@gtlaw.com
 5 GREENBERG TRAURIG, LLP
 6 3773 Howard Hughes Parkway
 7 Suite 400 North
 8 Las Vegas, Nevada 89169
 9 Telephone: (702) 792-3773
 10 Facsimile: (702) 792-9002

11 Counsel for Plaintiff

12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 Teller, an individual,

15 Plaintiff,

16 v.

17 Gerard Dogge (P/K/A, Gerard Bakardy) an
 18 individual,

19 Defendant.

Case No. 2:12-cv-00591-JCM-GWF

**EMERGENCY MOTION TO EXTEND
 THE TIME FOR SERVICE OF
 COMPLAINT AND SUMMONS UPON
 DEFENDANT GERARD DOGGE AND
 FOR SERVICE BY PUBLICATION OR
 AN ALTERNATIVE FORM OF
 SERVICE [FIRST REQUEST]**

20 Plaintiff Teller, an individual residing in Nevada (hereinafter "Teller" or "Plaintiff"), by
 21 and through his attorneys Greenberg Traurig, LLP, hereby files this Motion to Extend the
 22 Time for Service of the Complaint and Summons upon Defendant Gerard Dogge (P/K/A,
 23 Gerard Bakardy) ("Dogge") and for Service by Publication or an Alternative Form of Service
 24 on an **emergency** basis. This is the first request for an extension of time for service made
 25 by Plaintiff.

26 Plaintiff has made diligent efforts to locate Defendant, but Defendant has
 27 successfully avoided service of process. This emergency Motion is based upon the
 28 attached Memorandum of Points and Authorities, the Declaration of Mark G. Tratos, Esq.,
 and the pleadings and papers on file herein and any and all hearings and oral arguments

1 allowed by this Court. Plaintiff requests that this motion be heard on an emergency basis
 2 as the deadline to complete service upon the Defendant is August 9, 2012.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 **I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS**

5 This diversity action seeks redress for Defendant's copyright infringement and unfair
 6 competition related to the infringing work "The Rose & Her Shadow."

7 Plaintiff filed this lawsuit on April 11, 2012 [Docket # 1] and named Gerard Dogge as
 8 Defendant. Upon information and belief, Defendant Dogge is a professional entertainer,
 9 musician and singer, who also performs magic, and is know to be a Belgium national.
 10 Dogge has been known to reside in Fuerteventura, Spain as of March, 2012, and
 11 subsequently Stabroek, Beglium. See Positive Trace Report attached hereto as **Exhibit 1**.

12 On April 30, 2012, Plaintiff engaged a private investigator to attempt to locate
 13 Dogge. On May 7, 2012, Plaintiff received an address for Dogge in Stabroek, Belgium.
 14 See id. Plaintiff engaged Patrick Hofstrossler ("Hofstrossler") with the law firm Eubelius of
 15 Antwerp, Belgium, in an attempt to locate and serve Defendant Dogge. Hofstrossler
 16 attempted to serve Dogge at his Stabroek, Belgium, address, however Dogge could not be
 17 located. See letter dated July 24, 2012 regarding attempts of service attached hereto as
 18 **Exhibit 2**. Upon further research Hofstrossler was informed by a local Bailiff that Dogge
 19 owned a café in the area that had long since been abandoned. See id. Due to the nature
 20 of Dogge's profession, he is known to travel extensively for his performances and only
 21 remains in these locations for short periods of time.

22 Due to the various difficulties in locating Dogge, Plaintiff has not yet been able to
 23 serve Defendant Dogge and requests that this Court grant its request for service by
 24 publication with a courtesy copy via electronic mail to *Gerard-Bakardy@hotmail.com*.
 25 There will be no prejudice to Dogge from such alternative service, as the Defendant is fully
 26 aware of the claims against him. In fact, Defendant Dogge has posted a YouTube video in
 27 response to the claims, in which Dogge posts his email address *Gerard-*
 28 *Bakardy@hotmail.com*. See Screenshots of YouTube video attached hereto as **Exhibit 3**.

1 Fed.R.Civ.P. 4(m) provides that the Court may extend the period for service if the
 2 Plaintiff shows good cause for the failure to timely serve. Plaintiff respectfully submits that
 3 good cause exists to extend the period of time in which to serve Gerard Dogge and to
 4 complete service by publication and/or electronic mail.

5 **II. LEGAL ARGUMENT**

6 **A. This Court Should Grant an Order Permitting Service by Publication**

7 F.R.C.P. Rule 4(f)(4) provides

8 **Court Order:** In any other manner directed by the Court, so long as the chosen
 9 method is not prohibited by international agreement.

10 Nevada Rule of Civ. Proc. 4(e)(1)(i) provides:

11 When the person to whom service is to be made resides out of the state, or
 12 has departed from the state, or cannot, after due diligence, be found within
 13 the state, or conceals himself to avoid the service of summons, and the fact
 14 shall appear, by affidavit, to the satisfaction of the court or judge thereof, and
 15 it shall appear, either by affidavit or by a verified complaint on file, that a
 16 cause of action exists against the defendant in respect to whom the service is
 to be made, and that he is a necessary or proper party to the action, such
 court or justice may grant an order that the service be made by the
 publication of summons.

17 (emphasis added).

18 As set forth in the Declaration of Counsel attached hereto, Plaintiff has a valid cause
 19 of action against Defendant, but has not been able to locate and serve Dogge. This Court
 20 is justified under F.R.C.P. Rule 4(f)(3) and N.R.C.P. Rule 4(e)(1)(i) to Order that Dogge be
 21 served by Publication and/or electronic mail. Pursuant to F.R.C.P. Rule 4(m) "...if the
 22 plaintiff shows good cause for the failure, the court must extend the time for service for an
 23 appropriate period."

24 **B. This Court Should Extend the Time for Service Since Plaintiffs Have** 25 **Good Cause for Failing to Serve**

26 Here, as "the plaintiff [has shown] good cause for the failure, the court must extend
 27 the time for service for an appropriate period." See F.R.C.P. Rule 4(m); In re Sheehan,
 28 253 F.3d 507, 512 (9th Cir. 2001). If good cause is shown, a district court abuses its

1 discretion if it fails to grant additional time for service. DeTie v. Orange County, 152 F.3d
2 1109, 1111-1112 (9th Cir. 1998). Moreover, even without a showing of good cause, courts
3 have discretion to grant additional time to complete service. Id. Good cause for failure to
4 timely serve will be found, and plaintiff will receive additional time to serve, if defendant
5 takes affirmative actions to frustrate service of process. Williams-Gucie v. Board of Educ.,
6 45 F. 3d 161, 164 (7th Cir. 1995).

7 As demonstrated herein, Defendant has admitted knowledge of the instant dispute,
8 yet has avoided or frustrated Plaintiff's attempts to formally serve his pleadings at every
9 opportunity. Plaintiff has attempted to contact the Defendant by phone, email, and at
10 known residences, on numerous occasions. Due to Defendant's public acknowledgment of
11 the claims against him, it is highly likely that Defendant is aware of the current lawsuit
12 against him and is purposely avoiding service. See id. The end of the formal service
13 process ends on August 9, 2012.

14 Plaintiff has demonstrated a lengthy pattern of due diligence in attempting to serve
15 Defendant. However, due to Defendant's dilatory and evasive tactics, it is unlikely that any
16 progress in serving Defendant will be made by the service period end date. As such,
17 Plaintiff has demonstrated good cause as to why an extension of the service period is just
18 and necessary and Plaintiff's need for service by alternative means. Plaintiff therefore
19 respectfully requests that this Court grants an extension to the service period, and an order
20 allowing service by publication and/or email.

21 //

22
23 //

24
25 //

26
27 //
28

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiff Teller respectfully requests that the Court (a) grant
 3 this Motion for service by publication or an alternative method of service; and (b) grant
 4 Plaintiffs an extension until October 9, 2013 to serve Defendant Gerard Dogge. A copy of
 5 the Proposed Order Allowing Service by Publication is attached hereto as **Exhibit 4**.

6 DATED: August 6th, 2012.

7 GREENBERG TRAURIG, LLP

8 /s/ Mark G. Tratos

9 Mark G. Tratos (Bar No. 1086)
 10 Peter H. Ajemian (Bar No. 9491)
 11 3773 Howard Hughes Parkway
 12 Suite 400 North
 13 Las Vegas, Nevada 89169
 14 Counsel for Plaintiff

Greenberg Traurig, LLP
 Suite 400 North, 3773 Howard Hughes Parkway
 Las Vegas, Nevada 89169
 (702) 792-3773
 (702) 792-9002 (fax)